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ABSTRACT

Few, if any, categories of postsecondary educational institutions have escaped the impact of collective bargaining. On the one hand, bargained agreements may tend to set the pace in areas of salary and working conditions that must be met by any nonbargaining institution if they desire to be comparable or competitive. On the other hand, nonbargaining institutions may generate efforts to demonstrate that more can be attained by faculty without the necessity of collective bargaining. Taken altogether there is evidence of a clear intrusion of collective bargaining in the arena of postsecondary education more than sufficient to warrant serious attention and study.The advent of collective bargaining can lead to an imbalance of power, presumably on the side that initiated the process. If this should occur, it may be because those who receive the impact do not know how to react or are ill-equipped to do so. Yet the existence of a balance of power may represent the greater hope of the attainment of productive outcomes from the collective bargaining process. (Author/PG)

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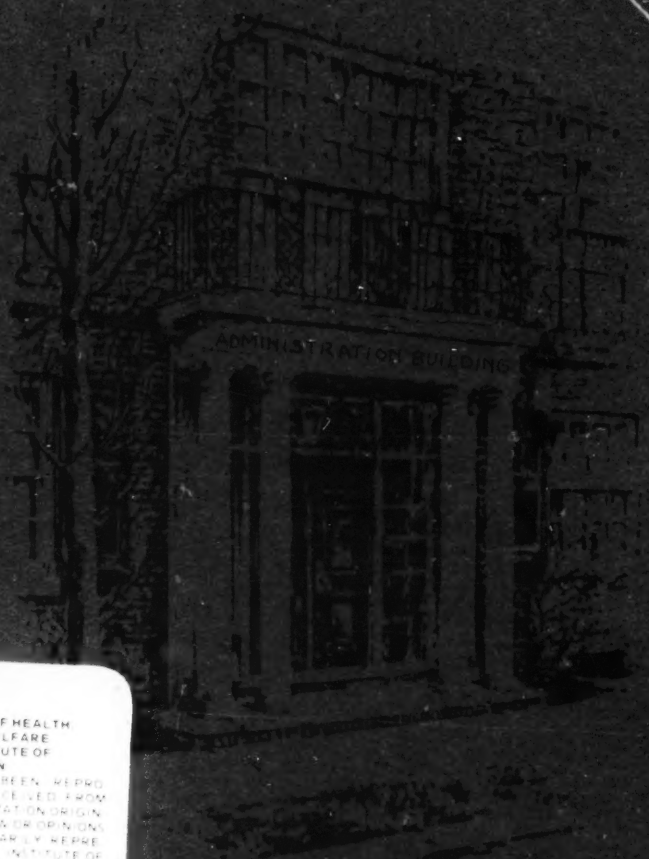
Background Paper

The Effects of Faculty Collective Bargaining On Higher Education



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EXCERPT FROM

FACULTY COLLECTIVE BARGAINING IN POSTSECONDARY INSTITUTIONS: THE IMPACT ON THE CAMPUS AND ON THE STATE

Prepared by the Higher Education Services Division
for the 1972 Annual Meeting of the
Education Commission of the States

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May 1972

FACULTY COLLECTIVE BARGAINING IN POSTSECONDARY INSTITUTIONS: THE IMPACT ON THE CAMPUS AND ON THE STATE

HISTORICAL DEVELOPMENT

Among the multitude of problems that beset higher education and the myriad challenges that confront it, no single item seems to portend more controversy than that likely to be generated by the emergence of collective bargaining. One observer-participant has characterized the phenomenon to date as ". . . a fascinating collage of inconsistencies."

"Collage of Inconsistencies"

Collective bargaining in any level of education is of relatively recent development. Its active origins are usually attributed to the efforts, only slightly more than a decade ago, of a minority of New York City public school teachers, efforts which did achieve recognition and, in short order, a contract. From this base collective bargaining radiated to other urban centers and from them into the hinterlands beyond. Today no part of the country has escaped some semblance of its impact in elementary and secondary schools.

Origins

When, in 1965, the second state in the nation enacted legislation which granted public employees in general and teaching personnel in particular the option of a formal bargaining relationship and when in the same year several other states followed suit, the breakthrough occurred. Today, at least 28 states have passed such enabling legislation in some form and several others are deliberating action on an imminent basis. The breakthrough did occur primarily, but certainly not exclusively, in the elementary and secondary levels within the field of education and in certain classifications of other public employees. Some postsecondary institutions were affected.

Public Employees Bargaining Legislation

In 1968 a reputable analyst estimated that perhaps 10,000 faculty members in higher education were under the aegis of some level of collective bargaining status, the overwhelming majority of which were faculty in community or junior colleges or vocational institutes. In 1972 published figures show that almost 100,000 faculty members have achieved or been granted this status. This growing number includes faculties not only of

Faculty Bargaining History: In 1968,

And Now

two-year institutions but of four-year colleges and universities and of several entire state systems. It includes some Catholic institutions, especially in the urban areas. Those who have had "near misses" on collective bargaining elections include Fordham, Manhattan, and the University of Detroit, some by a margin so close as to suggest that another election, if it were to occur, might well have different results.

Institutions Involved

While there is conflicting data regarding a precise list of colleges and universities under collective bargaining it appears that it now exists in some form or another in about 250 institutions, approximately 10 per cent of the total number of institutions in the country. Ninety to ninety-five per cent of these are public institutions at this stage and over one-third of the total are four-year colleges or universities.

Current Regional Pattern

There is as yet primarily a regional pattern in collective bargaining in higher education but for those in still unaffected areas of the country who might seek to avoid the coming of collective bargaining there are some disturbing signs. The State University of New York (SUNY) and the City University of New York (CUNY) are large and complex, yet they are included. In CUNY the two bargaining units for faculty which were originally separately recognized and highly competitive have recently found a common ground and presumably a common bond and are now acting in concert.

States Involved Extensively

The entire state college systems of New Jersey and Pennsylvania have similarly entered the fold. In Rhode Island the three public institutions of higher education in the state, which share a common governing board, have all entered into collective bargaining, each with a differing bargaining agent representing the faculty. Most of the eleven state colleges in Massachusetts are already certified and sitting at the bargaining table. In Michigan, three state colleges, each acting independently, have elected to go the collective bargaining route and more are evidencing interest.

Areas Showing Tendencies

Areas not yet affected are beginning to show tendencies which incline towards consideration and/or acceptance of collective bargaining on the part of faculty. While the most prestigious private institutions have not as yet

been penetrated, the Big 10 is beginning to feel pressure. Parts of the faculties at both the University of Michigan and at Michigan State University have expressed active interest. In some major universities activity is most evident in the professional schools. At a number of graduate schools across the country, teaching assistants are hard at the process of seeking recognition. In some cases they have achieved it.

COLLECTIVE BARGAINING: THE IMPACT

Few, if any, categories of postsecondary institutions have escaped the impact entirely. New petitions for recognition and new elections are being reported almost weekly. Even those campuses which with valid reason may regard themselves as reasonably safe have some cause for concern and interest. There is the possibility, indeed the probability, of a "ripple effect" in two respects. The first, or "domino" effect, suggests that when either comparable institutions or proximate institutions make a dramatic move towards collective bargaining others may follow suit. The second aspect is the effect that agreements reached on campuses which implement collective bargaining may have on salaries or conditions at similar or adjacent institutions which do not. This latter influence could take either one of two possible forms.

The Effects

Influences on Salaries and Conditions

On the one hand, bargained agreements may tend to set the pace in the areas of salary and working conditions which must be met by the nonbargaining institutions if they desire to be comparable or competitive. On the other hand, nonbargaining institutions may generate efforts to demonstrate that more can be attained by faculty without the necessity of collective bargaining, and in order to accomplish this they will grant greater benefits without those benefits having been advanced formally by anyone.

Forms of Influence

Taken altogether there is evidence of a clear intrusion of collective bargaining in the arena of postsecondary education more than sufficient to warrant serious attention and study.

No one can at this moment assert with any confidence that the pattern in higher education will duplicate what some view as the tidal wave which

Possible Tidal Wave

has overwhelmed elementary and secondary education, even though the possibility of such a prospect must be candidly considered. The circumstances are not the same, the conditions are not the same, and the traditions are not the same. Yet it should be recalled that in 1965 those who deplored the possibility of collective bargaining in elementary and secondary education argued that it was not appropriate to that situation and they found this inadequate to prevent or even impede the arrival of the phenomenon.

Challenge to University Traditions

The long established traditions of the university are clearly being subjected to question and challenge by some faculties as well as by other forces outside the university. These traditions may require critical reexamination by all elements which compose, contribute to, or in any way affect the collegiate community. Many would maintain that the nature of the mission of an institution of higher learning demands, if it is to be properly fulfilled, some natural immunity from social pressures and process which may be thoroughly appropriate to other bulwarks of society but which are not appropriate to higher education. It may be time to study this assertion, at the very least, to assure that either its restatement or its modification is soundly rooted in contemporary terms and in rational approach. It can hardly, today, be simply taken for granted.

Is Collective Bargaining Compatible with Higher Education

It might be the case, for example, that a careful scrutiny would reveal an urgent requirement that even if collective bargaining were found to be compatible to some degree with the purposes and perquisites of higher education, some clear modifications in its application might be in order. What might derive is a recognition that, while collective bargaining of itself might well apply to higher education, certain facets of the implementation of the process would call for changes in the processes of bargaining that are imperative, if the integrity of the institutions is to be preserved.

Possibilities to be Faced

There is a growing concern that unless this can be accomplished the very roots of higher education may be brutally torn up. There must be an accompanying concern as to whether, considering the state of the art, we are prepared to approach such an effort.

It could be, of course, that the traditional approach might be

reaffirmed. Such possibilities, or others that may pertain, can simply no longer be blithely ignored or brushed casually aside as matters which will somehow take care of themselves.

COLLECTIVE BARGAINING: THE GROWTH AND CAUSES

Growth of Collective Bargaining in Education

It is not generally recognized, and where recognized the implications are certainly not analyzed, that collective bargaining in the public educational sector is proceeding at an extremely rapid pace, both absolutely and relatively. When it is considered that in the private sector in the 37 years that have elapsed since the passage of the Wagner Act, approximately one-third of the labor force has become unionized, while in all levels of public education—elementary, secondary, and postsecondary—almost but not quite that same fraction has taken a union-line stance in one decade, something of significance becomes obvious. Almost everyone considers unions to be a vital force, for good or evil, in the private economy. Few, indeed, yet consider unions to be a vital force in the public sector. It may be time to reappraise the development as such, both in terms of its present state and of its potentiality.

Compared to General Labor Union Growth

Limited Reaction Time

The rapidity of the pace strongly suggests that the time for reaction to the phenomenon is limited. The acceleration of the pace in recent months impels the realization that the limited reaction time is at least commensurately diminished. This acceleration of pace is, perhaps, most noticeable in higher education. Since the initiative to invoke collective bargaining lies with faculty, it is questionable whether it lies within the capacity of administration even to inhibit the pace. Yet early students of the incipient movement, such as the Task Force of the American Association for Higher Education, reported some years ago that the reaction of administration may be equally as important as, if not more important than, faculty action in the determination of the course and the tenor of events.

Administrative Reaction

Need to Understand Motivations to Collective Bargaining

The impending task is a prodigious labor, perhaps an Herculean one. The initial need is to study, with intent to understand, and to empathize if not sympathize with faculty motivations which may be as many, as diverse,

and as complex as the individuals who respond to such motivations. Each individual may be reaching out for collective bargaining for his own highly personal reason.

Conditions Conducive to Collective Bargaining:

The general movement may come about simply as a duplication of what is perceived as a successful organization pattern for the achievement of power on the part of social groups of all kinds who have reached the conclusion that one can simply not wait for the eventual recognition of the merit of one's cause, and who by acting on this premise have made what appear to be measurable gains, even considering the costs of social disapproval that may also accrue.

Recognition of Due Reward?

Movement towards collective bargaining may be reflective of a sense of alienation from the institution, an alienation which some may well feel was not of their own making, or it may be a reaction to a well-meaning but somewhat misplaced characterization of the staff of the institution as "one big happy family." Some see it as a product of affluence, suggesting that affluence itself increases aspirations and the determination to achieve them. To some degree it may simply be a striking or reaching out to relieve the general tensions born of frustration and of a sense, real or imagined, of helplessness on the part of faculties either to influence or to control on the campus level the course of events and pressures which affect, if not determine, their collective professional destinies. Certainly these frustrations and/or this sense of helplessness are not totally unfounded.

Alienation from Institutions?

Paternalism?

Relief from Tensions?

Budget Pressures?

Financial pressures are so widespread as to be almost universal. Colleges and universities, when compared with other enterprises whether in the private sector or the public, budget inordinately larger proportions for personnel costs, direct and indirect. Of higher education operating budgets 70 to 90 per cent often go for these purposes, a situation which would be regarded as appalling in either the private economy or in other public agencies and institutions. In consequence, when budget reductions are vitally necessary, the burden falls heavily on personnel whether through staff reductions, through increased work load, or by other means.

Job Security?

Concern for job security is, therefore, reasonable. Aversion to the prospect of unnecessary or undesirable personnel adjustments is a

predictable reaction of the faculty, even when it seeks to act in a spirit of the most enlightened self-interest. Since administration and faculty, by virtue of their differing responsibilities, must look at matters from differing vantage point, it is not surprising if their views do not coincide. It is not amazing if perceptions should collide. It is not unnatural if the faculty members should wish, indeed insist, that their perceptions be given equal weight with those of administration.

Such motivations, and the variety of others that may pertain, deserve scrutiny. Recognition of such motivations and acceptance of validity in at least some of them may offer the only substantial hope for the avoidance of the invocation of power politics to achieve their fulfillment.

Change of Power Relationships in Collective Bargaining:

One of the specters which collective bargaining represents to many who deplore it is just such a reach for power. Most vigorous defenders of the traditions of higher education are at least nagged by the prospect of a loss of power by those elements now presumably possessed of power. Even though the underlying reach for power may be made, consciously or unconsciously, in order to be able to contend with forces in society at large, inevitably, where collective bargaining comes, internal power relationships on a particular campus are vitally affected.

Where Do the Management Functions Reside?

One general question deserves both clear articulation and, after serious reflection, an adequate answer. Is there really a management function in a college or university that specifically is borne by the administration and board? However this may be answered there are implications of great portent. If there is <u>not</u> a clear management function attributable to the administration, then there should be precise definition of where the management functions of the institution do reside and how they should be carried out. If the administration does carry the burden of management especially in regard to wages, hours, and conditions of employment of faculty, then at least to the degree that such management functions exist faculty may well be justified in embracing collective bargaining if it chooses as a counter to the possibility or the reality of excessive power of management. This question is not simple and deserves careful study.

Those concerned with the preservation of the proper authority of either the institution or the state might well ponder whether the emergence of binding arbitration, a common device for the resolution of matters at impasse (for whatever advantageous purposes it may serve) represents the investiture of decision-making authority in such a manner as to erode or potentially destroy the capacity to make effective decisions on critical issues at either the institutional or the state level.

Preservation of Authority

COLLECTIVE BARGAINING: THE COMMON ASSUMPTIONS

Assuming that collective bargaining either continues to exist or expand, there is evident need for education about the phenomenon for all who are or may be affected by it. Here, as in all education, the first task may be to dispel certain preconceived notions which either lack validity or are so rigid as to impede learning.

Need for Education

Academics have proceeded on many assumptions which require reexamination. Among these assumption are the following:

Common Academic Assumptions

1. That the adversary relationship which seems to accompany collective bargaining is inimical to collegiality.

   Adversary vs. Collegiality

2. That collective bargaining is a conflict-creating mechanism which will serve only to polarize or politicize a campus.

   Polarization

3. That a collective negotiation of wages and related matters is lacking in the dignity or virtue of professionalism when contrasted with individual negotiation of such items which as been so widely and so long practiced.

   Reduced Professionalism

4. That a compromise resolution of difference, which seems to be the outcome of the bargaining relationship, is inferior to a consensus resolution of difference, which is believed to be the derivative of the traditional relationship.

   Compromise vs. Consensus

5. That collective bargaining will increase costs, reorder educational priorities, or impede, if not prevent, institutional efficiency.

   Reduced Efficiency

6. That the "union," qua union, will control educational policy making by corrupting or destroying established decision-making patterns.

   vs. Established Decision-Making Patterns

7. That collective bargaining is incompatible with excellence. *vs. Excellence*

8. That by its internal effect and its external image, collective bargaining will serve to erode institutional autonomy. *vs. Autonomy*

9. That collective bargaining will bring with it some wave of "rampant radicalism." *Encouragement of Radicalism*

10. That contractual commitments engendered by collective bargaining will serve to "freeze", for the fixed period of the contract, the institution's capacity to adapt and grow, either financially or otherwise. *Restriction of Growth*

These are but examples. As many differing assumptions or more could perhaps be readily summarized. Some of these may be assumptions which are substantially warranted, while others may be completely mistaken, and all are subject to challenge.

There is, however, one operative assumption not widely held by academics that is deserving of thought. In the majority of states where legislatures have taken affirmative action and in the federal government where three successive administrations have maintained or sustained President Kennedy's 1962 executive order granting collective bargaining to federal employees, the assumption must be made that, rightly or wrongly, the provision of the opportunity to bargain collectively for faculty is regarded by legislative and/or executive branches of government as in the best public interest, all factors considered, and, in similar fashion where it is clearly applicable to higher education, in the best interests of such institutions and systems, again all factors considered. *State & Federal Collective Bargaining* *Considered as in the Public Interest*

Such public officials can, of course, be in error but they have been sustained in a number of instances by rulings of appropriate governmental agencies and by some courts of both original and appellate jurisdiction. This consideration must make us all pause since it is, many would assert, at odds with some of the basic tenets on which our educational institutions are based. These tenets are certainly worthy of reexamination. No endeavor dedicated to the pursuit of truth by the rigorous application of reason can, with consistency, resist the pursuit of truth regarding itself by the same process. Emotional and highly personalized commitments inevitably arise in *Reinforcement by Courts*

any controversy, but they must not become paramount.

Alternatives Might Exist

No declaration is being advanced that collective bargaining is the way towards anything, rather that it is a way. Alternatives to it must be assumed to exist and these deserve illumination and consideration in conjunction with it. Advocates assert that advantages accrue from collective bargaining. These should be weighed, accompanied by a similar weighing of disadvantages that may be discerned.

Flexibility and Adaptation

The history of collective bargaining in this country and its utility and application to both unskilled and highly skilled workers, to performers in the creative arts as well as to salaried professionals, to both private and public fields of enterprise strongly suggests that there must be some degree of flexibility in the process and at least a measurable capacity for adaptation.

Need for Skilled Practitioners

There is a dearth of available skilled or experienced practitioners in collective bargaining in postsecondary education, and, it must follow, a great extent of ignorance concerning that with which we may be confronted. It is incumbent upon us to harness and channel such resources as may be available so that they can be of the greatest benefit to faculties, administrators, state agencies, and legislators in making decisions which they may be called upon to make.

COLLECTIVE BARGAINING: CHANGE AGENT?

Institutions Facing Change

In many respects the society of which we are a part is in a state of change. No institution which helps to compose either the pillars or the fabric of that society dares assume that it will not be required to change with it. Such change as may be incumbent on postsecondary institutions should be, it is hoped, intelligently and thoughtfully initiated so as to enhance rather than to inhibit their functions and so as to wreak no havoc with their essential processes and to do as little violence to either as possible.

Who is the Change Agent?

Some concern legitimately arises as to the designation of the prime change agent within institutions. Should it be faculty? Should it be administration? Or should it be an outgrowth of the interface between the

two? The invocation of collective bargaining by faculty certainly represents a change of sorts. The response by administration to faculty initiative in bargaining will unquestionably affect the nature of that change, for better or worse.

Collective Bargaining as a Productive Change Vehicle

There persists a very proper question as to whether or not collective bargaining constitutes a vehicle for productive change. Some agreements already achieved largely confirm, by contract, the continuation of processes of a highly traditional nature. Others, perhaps more numerous, either alter significantly or displace entirely such traditional patterns. The variant outcomes deserve to be widely known and compared and contrasted. Each campus has its own individual characteristics and may require its own modification.

Faculty Authority

A larger question remains unexplored. In an article published some ten years ago which examined the functions and dysfunctions of faculty authority, it was postulated, along with other things, that faculty authority would tend to have a conservatizing influence on the essential elements of the university. Collective bargaining, whatever else it constitutes, is a reach in some dimension for authority by faculty.

And its Influence

Is this particular reach for authority likely to have a conservatizing influence in any recognizable dimension? Will program alteration be more difficult? Will flexibility in staff utilization be impeded or even rendered impossible? Will prospect of any change be subject to the adversary process, and if so what then impends?

Adversary Relationships

The adversary process is not necessarily synonymous with animosity, or with negativism, or with lack of common cause. The legal profession practices adversary relationships daily in fulfilling its most fundamental functions. Advocacy of differing points of view is vigorously pursued and contest occurs with fullest commitment to the cause of respective clients. Yet this takes place within a well-structured and well-monitored, even disciplined format and entails no necessary personalization or animus. And it transpires in joint pursuit of a common end—justice. Yet the law and the interpretation of it changes continually, presumably to meet the needs of the moment, with due respect for, even prime emphasis on, the importance of

tradition.

Is this a model of any kind for collective bargaining in higher education? The outcomes, to be sure, are measurably conditional on the skills and the experience and the imaginative insight of the practitioners. The most productive outcomes might well proceed from the interaction of two equally well matched adversaries. If this is a significant prospect as a vital factor in the public sector, too little, if anything, is being done to achieve it.

COLLECTIVE BARGAINING: UNANSWERED QUESTIONS IN AN UNCERTAIN FUTURE.

There is, in fact, little general understanding of either the process or even the terminology of the process. Who, for example, may bargain? Noninstructional or nonprofessional staff are usually recognized for bargaining purposes without incident or offense. Efforts on the part of teaching assistants to organize have been evident from coast to coast. Their dual status as both staff and students has, in several instances, occasioned litigation and has resulted in differing decisions in differing states. Student organization for purposes of collective bargaining is technically over the horizon at this moment but it may be just over the horizon and in fact in the incidents of student militancy of a few years ago collective bargaining techniques were utilized to effect resolution of several crises. In some few states administrative collective bargaining is sanctioned and is already in effect, even though presently its incidence is statistically minute.

Who May Bargain?

Teaching Assistants?

Students?

Administration?

Faculty bargaining absorbs the major attention of such literature as has developed to date, and this is relatively sparse. Yet as faculty bargaining develops, if students are affected by it, adversely as they see it, they may well organize in reaction to this, offering themselves as a "third force", seeking to intervene on those matters of most vital interest or concern to them. Speculation concerning this has already appeared in print. Experienced practitioners indicate that three-dimensional bargaining is infinitely more difficult and complex than two-dimensional. This deserves more attention than it is currently receiving.

Possible Student Organization

Who's to be Included in Bargaining?

Even where administrative bargaining has not emerged, and where it is reserved solely to faculty, one aspect of the "administrative" question frequently intrudes: the inclusion with or exclusion from the faculty unit of department chairmen and/or division heads. Differences of perception and opinion on this between faculty and administration are readily understandable. Judgmental determinations of such contests are usually rooted in the functions of the office rather than the titles thereof. Decisions differ from college to college.

Who Conducts the Negotiations?

If bargaining should be forthcoming, who then should actually conduct the negotiations? Faculty will, of course, select its own agent as it sees fit. Boards of trustees and administration face a difficult choice. There seems to be broad agreement on the part of most analysts that the president and members of the board should not participate directly. But should it be assigned as an extension of some already existing administrative function or should it be delegated to some highly experienced person as a primary, even exclusive, assignment? If the latter, should the designee be an "insider," a member of the staff, or an "outsider" to the college in particular or perhaps even to higher education in general?

Where Does the Bargaining Responsibility Lie?

Should bargaining responsibility in state systems be centralized or should it be localized, or both? If it should be centralized, is it properly a function of the collegiate superstructure or might it more appropriately be allocated to the executive branch of state government?

In the State Agency?

In the Legislature?

In the instance of public institutions which derive almost total funding from the action of some legislative body, should the bargaining more properly be done, at least regarding economic matters, directly with the body that controls the pursestrings? Where bargaining is provided for by legislation is there an accompanying responsibility to provide for the resources to carry on the process of bargaining successfully, whether those resources be financial or otherwise? In such circumstances is there an accompanying responsibility for the establishment of limits within which bargaining may occur, limits such as definition of bargainable issues and/or prescription of firm guidelines as to the extent to which all types of financial support may be expected?

Responsibility of State Government

Does the state government, which must by nature operate in the public eye, bear the primary responsibility for assuring that a process which it provided for functions in a productive, contributory, even hopefully stabilizing manner for the good of the general society? If so, what does this entail? If not, whose responsibility is it?

What Is Negotiable?

What is, or should be, negotiable? Can this be determined by legal dictum in any effective way? Can or should it be determined by mutual consent of the two parties to negotiations? Or must what is negotiable, or more accurately perhaps what is to be negotiated, be subject to the consequences of hardheaded negotiations on that subject? Is "what is negotiable" a negotiable matter?

Understanding the Bargaining Process

Is there general and clear understanding of the responsibilities, the problems, and the opportunities that devolve in the various stages of the bargaining process? The recognition stage? The unit determination phase? The preparation activities? The actual negotiations? The achievement of agreement? The ratification procedures? The implementation of contracts? Grievance procedures? Is there appreciation of the significance of impasse at any of these stages of the development of the phenomenon and of the available prospects for avoidance or amelioration of impasse? Are the procedures for conciliation, mediation, fact-finding, and arbitration distinctively understood, and the benefits and limitations of each recognized? Is there a psychological readiness to live in a situation which revolves around the concept of resolution of problems within the context of a balance of power? Are the implications of this discernible?

Balance of Power

The advent of collective bargaining can lead to an imbalance of power, a concentration on one side, presumably that side which initiated the process. If this should occur, however, it may be because those who receive the impact may not know how to react or may be ill-equipped to do so. Yet the existence of a balance of power may represent the greatest hope of the attainment of productive outcomes from the collective bargaining process once instituted.